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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FLATHEAD WARMING CENTER, Plaintiff, v. CITY OF KALISPELL, Defendant.	Case No: 9:24-cv-00141-KLD NOTICE OF WITNESSES FOR HEARING ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
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COMES NOW the City of Kalispell, through counsel of record, and hereby gives notice of witnesses they intend to call at the hearing on Plaintiff's Motion for Temporary Restraining Order:

1. Mayor and City Council Member Mark Johnson c/o Hammer, Quinn & Shaw, PLLC, P.O. Box 7310, Kalispell, Montana 59901 (406-755-2225). Mayor

Johnson's testimony is expected to take one hour. He is expected to testify regarding:

- a. The history, grounds, and reasons for the issuance of the CUP to the Warming Center, including what representations were made by the Warming Center to secure the CUP and how those representations were untrue.
- b. The history, grounds and reasons for City Council's rescission of the CUP;
- c. The process and procedures relied on by Council for the rescission;
- d. The Warming Center being provided notice and an opportunity to be heard;
- e. The City Council was neutral and unbiased;
- f. The "WHEREAS" findings stated within Resolution No. 6227 and Council's basis for its findings;
- g. The Council not singling out or treating the Warming Center differently than other CUPs; and
- h. Testimony to rebut allegations of the Warming Center as reflected in its complaint, affidavits and motion for TRO.

2. City Council Member Chad Graham c/o Hammer, Quinn & Shaw, PLLC, P.O. Box 7310, Kalispell, Montana 59901 (406-755-2225). Mr. Graham's

testimony is expected to take thirty to forty-five minutes. He is expected to testify regarding:

- a. The history, grounds, and reasons for the issuance to and rescission of the CUP held by the Warming Center;
- b. The process and procedures relied upon by Council for rescission;
- c. Notice and an opportunity to be heard provided to the Warming Center;
- d. The neutrality and lack of bias of the Council in considering the evidence and not singling out and/or treating the Warming Center differently than other CUPs;
- e. The passage of Resolution No. 6227, and the basis for the Council's findings;
- f. Evidence from the public upon which the Council relied in passing the Resolution and making its findings; and
- g. Testimony and evidence to rebut allegations of the Warming Center as reflected in its complaint, affidavits and motion for TRO.

3. Development Services Director Jarod Nygren c/o Hammer, Quinn & Shaw, PLLC, P.O. Box 7310, Kalispell, Montana 59901 (406-755-2225). Mr. Nygren's testimony is expected to take thirty minutes. He is expected to testify about the history of zoning in the area in question, the process and grounds for

issuance of the CUP, and for the City Council's rescission of the same. He will testify about the Kalispell City Code provisions applicable to granting and rescinding the CUP. He will further testify about what the Warming Center is or is not allowed to do, given the rescission of the CUP.

4. Chief of Police Jordan Venezio, c/o Hammer, Quinn & Shaw, PLLC, P.O. Box 7310, Kalispell, Montana 59901 (406-755-2225). Chief Venezio's testimony is expected to take twenty minutes. He is expected to testify from the perspective of law enforcement that there is an adverse effect on the surrounding neighborhood that exists during the Warming Center's operating months of October through April. He will explain and rely, in part, on the police call information data submitted to the City Council.

5. Terri Grace and/or Michelle Gravel, The Vision Clinic, 580 North Meridian Road, Kalispell, Montana 59901 (406) 755-5910. Ms. Grace's and/or Ms. Gravel's testimony is expected to take ten minutes. They are expected to testify as to their personal observations regarding the negative impact the Warming Center has had on the neighborhood and community, particularly during the Warming Center's operating months of October through April. They will testify consistent with their written submissions to the City Council.

6. Marshall Taylor, 670 5th Avenue West Noth, Kalispell, Montana 59901 (406)882-5374. Mr. Taylor's testimony is expected to take twenty minutes.

He is expected to testify as to his personal observations regarding the negative impact the Warming Center has had on the neighborhood and community, particularly during the Warming Center's operating months of October through April. He will further testify regarding the unsuccessful efforts to reach a resolution with the Warming Center on how to mitigate the adverse impacts of its operations on the neighborhood.

7. Renee Dimler, 533 West Wyoming St., Kalispell, MT 59901 (406-212-5251). Ms. Dimler's testimony is expected to take twenty minutes. She is expected to testify as to her personal observations regarding the negative impact the Warming Center has had on the neighborhood and community, particularly during the Warming Center's operating months of October through April.

8. Kindee R. Nelson, 220 Liberty Street, Kalispell, MT 59901 (406-799-0042). Ms. Nelson's testimony is expected to take twenty minutes. She is expected to testify as to her personal observations regarding the negative impact the Warming Center has had on the neighborhood and community, particularly during the Warming Center's operating months of October through April. She will further testify regarding the unsuccessful efforts to reach a resolution with the Warming Center on how to mitigate the adverse impacts of its operations on the neighborhood. Ms. Nelson will also testify to her comments to City Council.

9. The City reserves the right to call Tonya Horn, c/o Plaintiffs' counsel,

in the event Horn is not called and subject to cross-examination at the hearing. The City anticipates examination of Horn will take approximately forty-five minutes.

10. Any witnesses listed by Plaintiff.
11. Any necessary rebuttal witnesses.

Dated this 18th day of October, 2024.

HAMMER, QUINN & SHAW PLLC

/s/ Marcel A. Quinn

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